IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1198 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KISHORE RATILAL BRAHMAN

Appearance:

1. Criminal Appeal No. 1198 of 1992

Ms.Hansa Punani, learned A.P.P. for Appellant.

MS RUKHSANA M PATHAN for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 25/08/2004

ORAL JUDGEMENT

#. This appeal is filed by the State under Section 378 of the Criminal Procedure Code, 1973 against the order of acquittal passed by the learned Chief Judicial

Magistrate, Amreli in Summary Case No.2582 of 1992 on 19.09.1992.

#. The prosecution case in short is that on 07.08.1992 at village Devalia, the accused was found drunk and was not able to take care of himself. On these facts, chargesheet was filed against the respondent-accused for the offences punishable under Sections 66(1)(b) and 85(1)(2) of the Bombay Prohibition Act. The respondent-accused pleaded not guilty to the charge and after considering the evidence, the learned Magistrate acquitted the accused, against which this appeal is preferred.

#. Ms.Punani, learned A.P.P. submitted that on medical examination of the respondent-accused by Dr.Nitaben Parmar, it was found that there was concentration of alcohol in his blood of 0.1423% i.e. more than 0.0500. It is submitted that the evidence of the complainant exh.19 is supported by his complaint exh.20, other police officers and Dr.Nitaben parmar exh.13. The report of the public analyst exh.17 shows that there was concentration of alcohol of 0.1423% i.e. more than 0.0500% w/v. It is submitted that the learned Judge has erred in holding that there was a breach of Rule 4(1) of Bombay Prohibition (Medical Examination & Blood Test) Rules, 1959 and there is nothing on record to show that the syringe was not sterilised as per the autoclove method. Therefore, she prayed for allowing this appeal.

#. Against the aforesaid submissions, Ms.Pathan learned advocate for the respondent-accused read over before me the judgment of the trial Court and Rule 4(1) of the Bombay Prohibition (Medical Examination & Blood Test) Rules, 1959 and also the judgment in case of State of Gujarat V/s Bapuji Savaji reported in 1990(2) G.L.H. 451. Rules 4(1) read as under :

"4(1) Manner or collection and forwarding of blood :

The registered medical practitioner shall use a syringe for the collection of the blood of the person produced before him under Rule 3. The syringe shall be sterilized by putting in boiling water before it is used for the aforesaid purpose. he shall clean with sertilised water and wash the skin surface of that part of such person's body from which he intends to withdraw the blood. No alcohol shall be touched at any stage while withdrawing blood from the body of the person. He shall withdraw not less than 5 c.c. of veinous blood in the syringe from the

body of the person. The blood collected in the syringe shall then be transferred into a phial containing anti-coagulant and preservative and the phial shall then be shaken vigorously to dissolve the anti-coagulant and preservative in the blood. The phial shall be labelled and its cap sealed by means of sealing wax with the official seal or the monogram of the registered medical practitioner."

#. In light of the aforesaid rule, if we peruse the facts of the present case, it appears from the deposition of Dr.Nitaben Parmar that the syringe and needle used by her was not sterilised but it was kept in the autoclove machine for 15 minutes. She has also admitted that the procedure of autoclove was not done in her presence. In the aforesaid circumstances, there is clear-cut violation of Rule 4(1) of the aforesaid rules. Therefore, the court below has rightly acquitted the accused.

#. In the aforesaid circumstances, this appeal deserves to be dismissed and is accordingly dismissed.

(SHARAD D DAVE, J)

srilatha